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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,514	02/21/2007	Stefan Kullberg	39943	8061
116 7590 04/06/2010 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108				
EXAMINER				
LUONG, VINH				
ART UNIT		PAPER NUMBER		
3656				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/571,514

Applicant(s)

KULLBERG ET AL.

Examiner

Vinh T. Luong

Art Unit

3656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 10 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/GS/US)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

1. The preliminary amendment filed on March 10, 2006 has been entered.
2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because of the reasons, *e.g.*, listed below:

(a) The abstract should not use the implied phrase "The invention relates to" and the legal phraseology "means"; and

(b) The abstract is inconsistent with the drawings. For example, the abstract describes: "The wire arm is provided with one or several teeth (**19, 20**)" (emphasis added). However, FIG. 2 shows that the wire arm 15 is provided with one or several teeth 20 only.

Correction is required. See MPEP § 608.01(b).

4. The drawings are objected to because of the reasons, *e.g.*, listed below:

(a) Each part of the invention, such as, the curved support surface in claim 2 and the spaced side wall portions in claim 5 should be designated by a reference character. Please see MPEP §§ 608.01(o) and (g); and

(b) The drawings are not in compliance with 37 CFR 1.84. See Form PTO-948 attached.

Please note that MPEP 608.02(b) states: "[t]o be fully responsive, an amendment must include corrected drawings. See 37 CFR 1.85(c) and 37 CFR 1.121(d). The objection to the drawings will not be held in abeyance" and "[a] request to hold objections to the drawings in

abeyance will not be considered a *bona fide* attempt to advance the application to final action (37 CFR 1.135(c))." For examples of proper drawings, please see the "Guide for the Preparation of Patent Drawings" available from the USPTO web site at www.uspto.gov.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed feature(s), such as, the U- or V-shaped *section* and/or the spaced side wall portions of the support surface in claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

6. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
 - (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
 - (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
 - (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
 - (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
 - (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
 - (g) BRIEF SUMMARY OF THE INVENTION.
 - (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
 - (i) DETAILED DESCRIPTION OF THE INVENTION.
 - (j) CLAIM OR CLAIMS (commencing on a separate sheet).
 - (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
 - (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).
7. The disclosure is objected to because of the informalities, *inter alia*, listed below:
- (a) The specification should have appropriate headings listed above; and
 - (b) Each part of the invention, such as, the curved support surface in claim 2 and the spaced side wall portions in claim 5 should be designated by a reference character. Please see MPEP §§ 608.01(o) and (g).

Appropriate correction is required.

8. Claim 3 is objected to because of the following informalities: (a) the phrase "said axis" should have been changed to "said second axis"; and (b) the claim has typographical error, e.g., "at least15" should have been changed to "at least." Appropriate correction is required.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform to current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. For example, the phrase "Throttle control device" in line 1 of claim 1 should have been changed to "A throttle control device"; "bowden cable" in claim 6 should have been changed to "Bowden cable"; and "one common detail" in claim 10 should have been changed to "one-piece formed."

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required

feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation “a hand held tool,” and the claim also recites “a chain saw” which is the narrower statement of the range/limitation.

Claim element “corresponding means” in claim 1 is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function. It is unclear whether the means-plus-function language “corresponding means” associates with the teeth 19 only or also with other structure(s) disclosed in the specification.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or

(c) State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Claim 10/8 recites the limitation “the first and *second* springs” (emphasis added) in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10/9 recites the limitation "the *first* and second springs" (emphasis added) in line 2. There is insufficient antecedent basis for this limitation in the claim.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-6, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Nagashima (US 6,182,254 cited in International Search Report).

Claim 1

Nagashima's FIG. 12 teaches a throttle control device for a hand held tool, such as a chain saw, which is provided with a forwardly extending wire 17 for transmitting a motion from a throttle control lever 70 turnably arranged about a first axis 35 to a throttle valve, one end of the wire 17 being secured to a wire arm 45, 78 that is turnably arranged about a second axis 46 and that is provided with one or several teeth 77 cooperating with corresponding means 73 on the throttle control lever 70 characterized in that the second axis 46 is arranged behind the first axis 35. *Ibid.* 12:17-37.

Claim 2

The wire arm 45, 78 comprises a curved support surface 45 for the wire 17 as seen in the second axis direction 46.

Claim 3

The support surface 45 extends at least around said second axis 46.

Claim 4

The support surface 45 at least partly is circular.

Claim 5

The support surface 45 is provided with spaced side wall portions (FIG. 8).

Claim 6

The wire 17 is a part of a Bowden cable 15.

13. The following is a quotation of 35 USC 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claims 7-10, as best understood, are rejected under 35 USC 103(a) as being unpatentable over Nagashima in view of Hammond (US 4,028,804 cited in International Search Report).

Claim 7

Nagashima teaches the invention substantially as claimed. However, Nagashima does not teach a safety lever that prevents the throttle control lever from moving if the safety lever is not activated.

Hammond teaches the safety lever 72 that prevents the throttle control lever 26 from moving if the safety lever 26 is not activated. (Hammond 6:47-8:18)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to associate Nagashima's throttle control lever with the safety lever in order to prevent the throttle control lever from moving if the safety lever is not activated as taught or suggested by Hammond. The association of Nagashima's throttle control lever with the safety lever would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement" *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) and it "does no more than yield predictable results." *KSR* at 1739.

Claims 8-10

Nagashima teaches the invention substantially as claimed. However, Nagashima does not teach the throttle control lever being under the influence of the first and second return springs that are one common detail (*i.e.*, one-piece formed).

Hammond teaches the first and second return springs 70 and 64 (FIG. 2) that are one common detail in order to influence the throttle control lever 26. (Hammond 3:1-22)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the first and second return springs that are one common detail in order to influence the throttle control lever of Nagashima as taught or suggested by Hammond. *KSR*.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Muller (teeth 18 and 19), Tsunoda et al. (teeth 21 and 24), Nystrom et al. (wire arm 30), and Carlson (teeth 348 and 350 in FIGS. 12-17).

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday, Tuesday, Thursday, and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/
Primary Examiner, Art Unit 3656